

2010

Christopher Ladd v. Bowers Trucking and the Estate of Tyrone A. Granlund : Reply Brief

Utah Court of Appeals

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Aug. 18, 2011
C.C.O

IN THE UTAH COURT OF APPEALS

CHRISTOPHER LADD,

Plaintiff/Appellant,

vs.

BOWERS TRUCKING, INC., and The
Estate of TYRONE A. GRANLUND,
deceased,

Defendant/Appellee.

REPLY BRIEF OF APPELLANT

Case No. 201000889-CA

District Court Case No. 080301640

APPEAL FROM SUMMARY JUDGMENT, IN THE THIRD JUDICIAL
DISTRICT COURT, TOOELE COUNTY, STATE OF UTAH, THE
HONORABLE STEPHEN L. HENRIOD PRESIDING

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FILED
UTAH APPELLATE COURTS

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IN THE UTAH COURT OF APPEALS

CHRISTOPHER LADD,

Plaintiff/Appellant,

vs.

BOWERS TRUCKING, INC., and The
Estate of TYRONE A. GRANLUND,
deceased,

Defendant/Appellee.

Case No. 2009089-CA

District Court Case No. 080501087

REPLY BRIEF OF APPELLANT

ARGUMENT

1. Ladd Preserved the Issue of Causation in His Opposition to Defendants' Motion for Summary Judgment and Has Presented Evidence of Causation.

Defendants' motion for summary judgment was in part based on Plaintiff Ladd's failure to prove causation. In that regard, Defendant argued that Plaintiff's failure to designate an expert witness to prove medical causation was fatal to his case. R.227-229. Defendants' Brief contends that Plaintiff's appeal of this issue as one not preserved for the record. However, Plaintiff, in his Memorandum in Opposition to Motion for Summary Judgment and his Corrected Motion for Summary Judgment identified the facts

which showed which injuries he suffered after being struck by Defendants' vehicle and argued that the injuries he suffered in the rollover were different and distinguished from the accident involving Defendants' vehicle. R. 182, 183, 186, 247, 248 and 250.

Moreover, Plaintiff identified the treating physicians in his Initial Disclosure who would testify regarding the treatment for Plaintiff's injuries and his prognosis. (See Addendum Initial Disclosures March 30, 2009).

Defendants contend that Ladd cannot properly meet his burden of proving medical causation because, as contended by Defendants, there were three different accidents and an expert must opine what injuries Ladd suffered during which accident. However, causation does not have to be proved with expert testimony or absolute certainty. "If a bicyclist falls and breaks his arm, causation is assumed without argument because of the temporal relationship between the accident and the **injury**. The law does not object that no one measured the exact magnitude and angle of the forces applied to the bone. Courts do not exclude all testimony regarding the fall because the mechanism of gravity remains undiscovered. Legally, *an observable sequence of condition -- event -- altered condition, has been found sufficient to establish causation even when the exact mechanism is unknown.* (emphasis added) *Alder v. Bayer Corp.*, 2002 Utah 115, P88 (Utah 2002). "In Utah, in all but the most obvious cases, testimony of lay witnesses regarding the need for specific medical treatment is inadequate to submit the issue to the jury." *Beard v. K-Mart Corp.*, 2000 UT App 285, P16 (Utah Ct. App. 2000). Here, Ladd has testified as to the injuries he suffered after the Defendants' vehicle hit the Rasmussen vehicle knocking him to the ground. Plaintiffs' treating physicians will testify as to the treatment received which included punctured lung, lacerations, broken bones and a brain injury. It is not outside of the

realm of the lay person to understand that when a semi-tractor and trailer strikes a vehicle at speed sending the vehicle into a person that the person would suffer the types and serious injuries alleged by Plaintiff. This is exactly the type of case where causation can be discerned by the lay person as to Defendants' negligence causing injury to Plaintiff. This is all Utah law requires. Therefore, the trial court erred in ruling that the failure to designate an expert to apportion between the injuries, when Plaintiff has testified about what injuries he suffered and when, is fatal to Plaintiff's case.

CONCLUSION

Ladd preserved the issue of causation on appeal in his Opposition to Defendants' Motion for Summary Judgment. Ladd suffered the types of injuries in the accident involving Defendants' vehicle that a lay person could determine would naturally flow from such an event. Therefore, Plaintiff can meet his burden of proving medical causation and the trial court's granting of summary judgment should be reversed.

RESPECTFULLY SUBMITTED this 8th day of July, 2011.

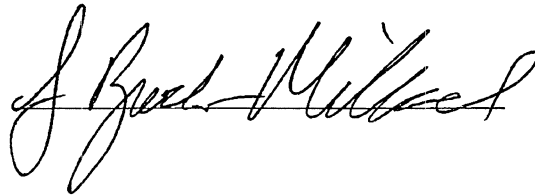
WRONA LAW FIRM, P.C.


S. BROOK MILLARD
Attorneys for Plaintiff/Appellant

MAILING CERTIFICATE

I hereby certify that on the 8th day of July, 2011 I served a copy of the foregoing REPLY BRIEF OF APPELLANT on each of the following by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Theodore E. Kanell
Plant, Christensen & Kanell, P.C.
136 E. South Temple, Suite 1700
Salt Lake City, Utah 84111

A handwritten signature in black ink, reading "J. Brent Mitchell". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

ADDENDUM

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Attorneys for Plaintiffs

**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR TOOELE COUNTY, STATE OF UTAH**

| | |
|--|---|
| CHRISTOPHER LADD, Plaintiff vs. BOWERS TRUCKING, INC. and The Estate of TYRONE A. GRANLUND, deceased, Defendants. | PLAINTIFF'S RULE 26(a)(1) INITIAL DISCLOSURES Case No.. 080301640 Judge Stephen L. Henriod |
|--|---|

Plaintiff, by and through undersigned counsel, hereby submits the following Utah Rule of Civil Procedure 26 (a)(1) Disclosures, stating as follows:

**A IDENTIFICATION OF WITNESSES HAVING KNOWLEDGE OF
DISCOVERABLE INFORMATION SUPPORTING CLAIMS.**

The following have knowledge of discoverable information:

- 1 Christopher Ladd – Plaintiff
- 2 Barbara Lee Long – Witness at the scene identified in police report
- 3 Vickie Nielsen – Witness at the scene identified in police report
- 4 Natasha Nielsen – Witness at the scene identified in police report

5. Trooper Craig Ward – Utah Highway Patrol
Investigated the crash which is the subject of this lawsuit. He may have information regarding the crash, how it occurred, and the information contained in the investigation report.
6. Thomas Riessen – Witness at the scene identified in police report.
7. Richard Ouk – Witness at the scene identified in police report.
8. B.W. Clayton – Utah Department of Transportation, Office of Motor Carriers, investigated condition of Bowers Trucking tractor and trailer.
9. James Earm – Witness at the scene identified in police report.
10. Adrian Moon, Kirk Petersen and Mike Shafto – Wendover Ambulance Service EMTs who assisted Plaintiff prior to his being air evacuated.
11. Any person(s) or individuals identified by Defendant.

The individuals named below are persons that provided medical services to Plaintiff, Christopher Ladd, and may have information regarding the medical treatment provided and future prognosis:

12. Adrian Moon, Kirk Petersen and Mike Shafto, Wendover Ambulance – P.O. Box 2530, Wendover, NV 89883
13. Dr. Welch, IHC Life Flight – 8th Avenue and C Street, Salt Lake City, UT 84143
14. James Morgan, M.D., IHC Health Centers – 5858 S. Fashion Blvd. Murray, UT 84127
15. Michael R. Chardack, M.D., LDS Hospital – 8th Ave. & C Street, Salt Lake City, UT, 84143
16. Dr. Weaver, LDS Hospital – 8th Ave. & C Street, Salt Lake City, UT, 84143
17. W. Edward Hildebrand, M.D., LDS Hospital – 8th Ave. & C Street, Salt Lake City, UT, 84143
18. Charles C. Rich, M.D., LDS Hospital – 8th Ave. & C Street, Salt Lake City, UT, 84143
19. William Rees, M.D. LDS Hospital – 8th Ave. & C Street, Salt Lake City, UT, 84143

20. W. James Morrison, M.D., LDS Hospital –8th Ave. & C Street, Salt Lake City, UT, 84143
21. V. Frank Gabor, M.D., LDS Hospital –8th Ave. & C Street, Salt Lake City, UT, 84143
22. A. Lee Bahr, M.D., LDS Hospital –8th Ave. & C Street, Salt Lake City, UT, 84143
23. Bruce Hebdon, M.D., LDS Hospital –8th Ave. & C Street, Salt Lake City, UT, 84143
24. David C. Hardy, M.D., LDS Hospital –8th Ave. & C Street, Salt Lake City, UT, 84143
25. Dennis Welch, M.D., Cottonwood Hospital –5770 South 330 East, Murray, UT, 84107
26. Bradley J. Morris Cottonwood Hospital –5770 South 330 East, Murray, UT, 84107
27. Dennis M. Welch, M.D., Cottonwood Hospital –5770 South 330 East, Murray, UT, 84107
28. Mountain Medical Physician Specialists (fka Utah Radiology Associates) – 296 E. 3900 S. Salt Lake City, UT 84107
29. Subbarao Adusumalli, M.D., Mountain West Anesthesia – 1954 E. Ft. Union Blvd., #102, Salt Lake City, UT84121
30. Berry D. Bergquist, M.D., Mountain West Anesthesia – 1954 E. Ft. Union Blvd., #102, Salt Lake City, UT84121
31. Walter Reichert, M.D., Western Neurological Assoc. – 1151 E. 3900 South, Salt Lake City, 84124
32. Dennis Thoen, M.D., Western Neurological Assoc. – 1151 E. 3900 South, Salt Lake City, 84124
- 33.
34. Kurt, Physical Therapist, The Orthopedic Specialty Hospital (TOH) – 5848 S. Fashion Blvd. , Murray, UT 84107
35. David Sikich – TOSH – 5848 South Fashion Blvd., Murray, UT 84107

The following individuals are persons who may provide testimony as to pre- and post-accident status of Christopher Ladd as it relates to damages of Plaintiff:

36. Current or prior employers or clients, prior teachers, professors, friends, and family of Plaintiff.
37. Joe Hesse, UHaul – 55 East (39th and Main Street) State Street, Salt Lake City, UT 84117 – Chris supervisor
38. Justin Sansing – (801) 915-5131 – Chris’ friend and former co-worker
39. Jason Sansing, UHaul – East (39th and Main Street) State Street, Salt Lake City, UT 84117 (801)-864-9138 – Chris’ co-worker
40. Bruce Spradling, UHaul (801)633-5573 East (39th and Main Street) State Street, Salt Lake City, UT 84117 – Chris’ co-worker
41. Carol Gough – (801) 967-8635 – Chris’ mother
42. Faith Gordon – (801) 573-0947 – Chris’ sister
43. Nonie Wright – 5537 W. Saguaro Dr., West Jordan, UT 84081 – Chris’ wife
44. Tiffany and Dave Snowball – (801) 694-8941 – Chris’ sister and brother-in-law
45. Scott McIntyre – (801) 688-8579 – Chris’ friend.
46. Cody and Kristy Anderson – (602) 570-4395 – Chris’ friend.

B. DISCOVERABLE DOCUMENTS, DATA COMPILATIONS, AND OTHER TANGIBLE THINGS.

These records will be made available for inspection and review at the Plaintiff’s attorney’s office, otherwise, copies will be made at a Defendant’s expense, if requested in writing:

1. Medical Records and billings from Plaintiff’s medical providers,
2. Police investigation report;
3. Plaintiff’s tax filings from 2002 to current;

4. Plaintiff employment documents; and
5. Documents, photographs, videos, statements, etc. from Defendant.

Additional records and bills may be generated and/or received from the above entities.

C. COMPUTATION OF DAMAGES

As outlined in the Scheduling Order, Plaintiff will retain an Economics Expert to provide a calculation of Plaintiff's damages. Plaintiff will produce a detailed report from this expert in accordance with the Utah Rules of Civil Procedure and the case management order entered in this case.

Plaintiff seeks damages for past, present, and future economic and non-economic damages resulting from his injuries including, without limitation, damages for permanent physical injuries, pain and suffering, loss of enjoyment of life, loss of income and earning capacity, essential services, physical impairment, disfigurement, medical bills, prejudgment and post-judgment interest, litigation costs, and any attorney fees allowed by law.

At the present time Plaintiff is still compiling necessary information to perform a computation on the amount of economic damages resulting from his injuries, but such computation and the underlying information from which it is reached shall be made available to Defendant pursuant to Utah Rules of Civil Procedure, Rule 26. These computations will also be the subject of expert opinion which shall be disclosed pursuant to Utah Rules of Civil Procedure, Rule 26.

In the interim, Plaintiffs provide the following preliminary damage computation, and specifically reserve the right to revise these calculations based on evidence developed through further investigation and discovery:

1. Medical Expenses

Plaintiff has incurred medical expenses as a result of her injuries and the past care she has received. Plaintiff discloses to Defendant that the cost of medical and rehabilitation expenses incurred to date for the care of Plaintiff is in excess of \$60,000. Bills have been requested from her providers and upon receipt of all bills related to her accident, the same will be provided to Defendants upon request.

2. Loss of Earning Capacity

Plaintiff seeks damages based on loss of earning capacity (past and future) due to her injuries sustained in this incident. Plaintiff specifically reserves the right to revise calculations based on evidence developed through further investigation and discovery.

Faye has primarily lost out on her pre-injury wages since the accident. At the time of the accident, he was earning \$10.00 per hour working 40 hours a week. He missed 77 weeks of work following the accident for a total loss of at least \$30,800. After being hired by his current employer, Chris has missed approximately 55 weeks at 12.00 to \$13.50 per hour, and working on average of 45 to 50 hours per week. Chris' lost wages at his current job, related to injuries from the accident, are between \$31,194 and \$33,230. An approximation of Chris' lost wages to date is \$61,944 to \$64,030.

3. Future Medical Expenses

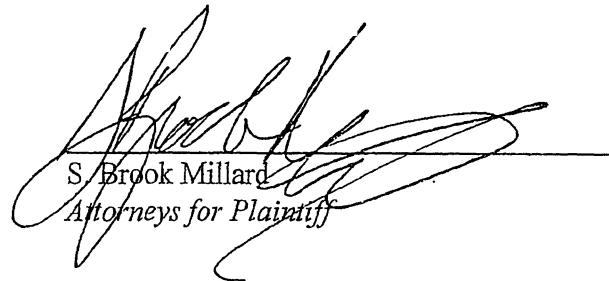
Chris Ladd will continue to incur medical expenses due to the injuries he sustained in this incident. At this time, a precise estimation of future medical expenses cannot not be calculated. Plaintiff expects to retain a life care planning/vocational rehabilitation and economist experts to determine and calculate said expenses.

4. General Damages

Plaintiff claims entitlement to non-economic general damages. Plaintiff's counsel anticipates requesting that the jury award fair and reasonable general damages.

DATED this 30th day of March, 2009.

MORTON | MILLARD, PLLC



S. Brook Millard
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of March, 2009, a true and correct copy of the above and foregoing was served via **U.S. Mail** to the following:

Theodore E. Kanell
Plant, Christensen & Kanell
136 E. South Temple, #1700
Salt Lake City, UT 84111
Attorneys for Defendants